

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

|                         |   |                       |
|-------------------------|---|-----------------------|
| BRIAN THOMAS LOWERY,    | ) |                       |
|                         | ) |                       |
| Petitioner,             | ) |                       |
|                         | ) |                       |
| -vs-                    | ) | Case No. CIV-09-954-F |
|                         | ) |                       |
| THE ATTORNEY GENERAL OF | ) |                       |
| THE STATE OF OKLAHOMA,  | ) |                       |
|                         | ) |                       |
| Respondent.             | ) |                       |

**ORDER**

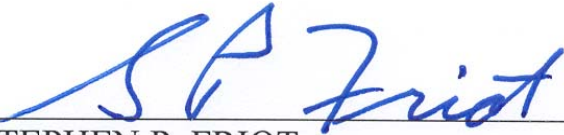
Before the court is the Report and Recommendation of United States Magistrate Judge Gary M. Purcell issued on September 3, 2009. In the Report and Recommendation, Magistrate Judge Purcell recommends that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed without prejudice to refiling in the appropriate judicial district.

Although Magistrate Purcell advised petitioner of his right to file an objection to the Report and Recommendation on or before September 23, 2009 and further advised petitioner of the consequences of the failure to timely object to the Report and Recommendation, petitioner has not filed an objection. In addition, petitioner has not filed a request for an extension of time to file an objection. With no objection to the Report and Recommendation being filed, the court finds that the same should be accepted, adopted and affirmed.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on September 3, 2009 (doc. no. 4) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Petitioner's Petition Under 28 U.S.C. § 2254 for Writ

of Habeas Corpus by a Person in State Custody is **DISMISSED WITHOUT PREJUDICE** to refiling in the appropriate judicial district.

DATED October 7, 2009.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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